

SENATE BILL No. 128

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2-290.5; IC 16-18-2-337.8; IC 16-41-6.

Synopsis: Mandatory HIV testing of pregnant women and newborns. Requires that each pregnant woman be tested for the antibody or antigen to the human immunodeficiency virus (HIV) during pregnancy. Requires a physician who diagnoses a woman's pregnancy to take a sample of blood at the time of diagnosis and submit each sample to an approved laboratory for a standard serological test for HIV. Requires a person other than a licensed physician who attends a pregnant woman, but who is not permitted by law to take blood specimens, to cause a sample of the pregnant woman's blood to be taken by a licensed physician, who must then submit the sample to an approved laboratory for an HIV test. Requires that a blood sample for an HIV test be taken from a woman at the time of delivery if there is no written evidence
(Continued next page)

Effective: July 1, 1999.

Miller

January 6, 1999, read first time and referred to Committee on Health and Provider Services.



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that the woman was tested for HIV during her pregnancy. Requires that a blood sample be taken from a newborn infant for HIV testing if the newborn infant's mother has not been tested for HIV. Requires that information pertaining to the woman's HIV testing status be included on each birth certificate or stillbirth certificate. Requires that a pregnant woman be told of all available treatment options if the pregnant woman has a positive HIV test. Requires the individual who orders an HIV test to tell the pregnant woman that the purpose of the test is to protect the health of her unborn child. Repeals a law pertaining to voluntary HIV testing for pregnant women. Requires the state department of health to develop and distribute written materials explaining treatment options for individuals who have a positive test for HIV.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 128

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-337.8 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 1999]: **Sec. 337.8. "Standard serological test**
4 **for HIV", for purposes of IC 16-41-6, has the meaning set forth in**
5 **IC 16-41-6-0.5.**

6 SECTION 2. IC 16-41-6-0.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 1999]: **Sec. 0.5. As used in this chapter, "standard serological test**
9 **for HIV" means a test recognized as a standard serological test for**
10 **the antibody or antigen to the human immunodeficiency virus**
11 **(HIV) by the state department.**

12 SECTION 3. IC 16-41-6-1 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Except as
14 provided in subsection (b), a person may not perform a screening or
15 confirmatory test for the antibody or antigen to the human



immunodeficiency virus (HIV) without the consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4, **5, 6, or 7** of this chapter.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 4. IC 16-41-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Subject to subsection ~~(e)~~, **(f)**, if

~~(1) the mother of a newborn infant has not had a test performed under IC 16-41-6-2.5;~~ **section 5, 6, or 7 of this chapter,**

~~(2) the mother of a newborn infant has refused a test for the newborn infant to detect the human immunodeficiency virus HIV or the antibody or antigen to HIV; and~~

~~(3) a physician believes that testing the newborn infant is medically necessary;~~

the physician **may overseeing the care of the newborn infant shall** order a confidential test for the newborn infant in order to detect ~~the human immunodeficiency virus HIV~~ or the antibody or antigen to HIV. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders a test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the test; and

(2) provide ~~human immunodeficiency virus HIV~~ information and counseling to the mother. The information and counseling must include the following:

(A) The purpose of the test.



(B) The risks and benefits of the test.

(C) A description of the methods of HIV transmission.

(D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk.

(E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential test ordered under subsection (a) must be released to the mother of the newborn infant.

(e) If a test ordered under subsection (a) is positive, the physician who ordered the test shall inform the mother of the newborn infant of all treatment options available to the newborn infant.

~~(e)~~ (f) If ~~the~~ a parent of the newborn infant objects in writing for reasons pertaining to religious beliefs, the newborn infant is exempt from the test under subsection (a).

~~(f)~~ (g) The state department shall adopt rules under IC 4-22-2 to carry out this section.

SECTION 5. IC 16-41-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5. (a) A physician who diagnoses a pregnancy of a woman shall take or cause to be taken a sample of the pregnant woman's blood at the time of diagnosis of pregnancy and shall submit each sample to an approved laboratory for a standard serological test for HIV.**

(b) A physician who orders a test under subsection (a) shall explain to the pregnant woman that the purpose of the test is to protect the health of her unborn child.

(c) If a test ordered under subsection (a) is positive, the physician who ordered the test shall inform the pregnant woman of all treatment options available to her.

SECTION 6. IC 16-41-6-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 6. (a) A person other than a physician who is permitted by law to attend a pregnant woman, but who is not permitted by law to take blood specimens, shall cause a sample of the blood of the pregnant woman to be taken by or under the direction of a licensed physician, who shall submit the sample to an approved laboratory for a standard serological test for HIV.**

(b) The person who attends the pregnant woman under



subsection (a) shall explain to the pregnant woman that the purpose of the test is to protect the health of her unborn child.

(c) If a test ordered under subsection (a) is positive, the person who attends the pregnant woman shall inform the pregnant woman of all treatment options available to her.

SECTION 7. IC 16-41-6-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) If, at the time of delivery, there is no written evidence that a standard serological test for HIV has been made in accordance with section 5 or 6 of this chapter, the person in attendance at the delivery shall take or cause to be taken a sample of the blood of the woman at the time of the delivery and shall submit the sample to an approved laboratory for a standard serological test for HIV.

(b) The person in attendance at the delivery shall explain to the woman that the purpose of the test is to protect against transmission of the disease to her child.

(c) If a test ordered under subsection (a) is positive, the person in attendance at the delivery shall inform the woman of all treatment options available to her.

SECTION 8. IC 16-41-6-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The state department shall require, on each birth certificate and stillbirth certificate, in addition to the information otherwise required to be included on the certificate, the following information:

(1) Whether a serological test for HIV was made for the woman who bore the child.

(2) If a serological test for HIV was made, the date the blood specimen was taken.

(3) If a serological test for HIV was made, whether the test was made during pregnancy or at the time of delivery.

(4) If a serological test for HIV was not made, the reason why the test was not made.

(b) A person who prepares a birth certificate or a stillbirth certificate shall include the information required in subsection (a).

SECTION 9. IC 16-41-6-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) The state department shall:

(1) prepare written materials that explain the treatment options available to an individual who has a positive test for HIV; and



1 **(2) distribute the materials to physicians and other persons**
2 **who are allowed by law to attend a pregnant woman.**

3 **(b) The state department shall update and distribute the**
4 **materials described in subsection (a) at least one (1) time every two**
5 **(2) years.**

6 SECTION 10. THE FOLLOWING ARE REPEALED [EFFECTIVE
7 JULY 1, 1999]: IC 16-18-2-290.5; IC 16-41-6-2.5.

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